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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Herschel, Krull
Application No.:	10/691916
Filed:	October 23, 2003
For:	A BRAKING DEVICE FOR AN INDUSTRIAL TRUCK
Examiner:	Robert Siconolfi
Group Art Unit:	3683
Firm Docket No.:	H01.2B-11371-US01

MAIL STOP APPEAL BRIEF-PATENTS

DATE: February 16, 2006 TIME: 11³⁹ FACSIMILE NO.: 1-571-273-8300TOTAL NUMBER OF PAGES (including transmittal letter): 11

FACSIMILE TRANSMITTAL LETTER

Following please find a 10 page Appeal Brief, and 1 page Facsimile Transmittal Letter.

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If any extension of time for the accompanying response is required or if a petition for any other matter is required, applicant requests that this be considered a petition therefore.

If any additional fees associated with this communication are required and have not otherwise been paid, please charge the additional fees to Deposit Account No. 22-0350. Please credit overpayment associated with this communication to the Deposit Account No. 22-0350.

Respectfully submitted,
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Julie Emerson

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Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Docket No.: H01.2B-11371-US01

BRIEF ON APPEAL

This is a Brief on Appeal for the above-identified application in which claims 1-10 were rejected in the Final Office Action mailed June 16, 2005. A Notice of Appeal was filed in this case on December 16, 2005. This brief is submitted in accordance with 37 C.F.R.

§ 41.37:

(a)(1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under §41.31.

(2) The brief must be accompanied by the fee set forth in §41.20(b)(2).

(b) On failure to file the brief, accompanied by the requisite fee, within the period specified in paragraph (a) of this section, the appeal will stand dismissed.

The fees required under § 41.20(b)(2) and any required petition for extension of time for filing this brief therefore are dealt with in the accompanying Transmittal Letter.

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

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(i) Real Party in Interest

(i) Real party in interest. A statement identifying by name the real party in interest.

The application is assigned to Jungheinrich Aktiengesellschaft, Friedrich-Ebert-Damm 129, Hamburg, Germany D-22047.

(ii) Related Appeals and Interferences

(ii) Related appeals and interferences. A statement identifying by application, patent, appeal or interference number all other prior and pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of any decisions rendered by a court or the Board in any proceeding identified under this paragraph must be included in an appendix as required by paragraph (c)(1)(x) of this section.

No related appeals or interferences are pending.

(iii) Status of claims

(iii) Status of claims. A statement of the status of all the claims in the proceeding (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled) and an identification of those claims that are being appealed.

Claims -10 are pending and have been rejected. No claims have been allowed or objected to. The claims that are being appealed are 1-10.

(iv) Status of amendments

(iv) Status of amendments. A statement of the status of any amendment filed subsequent to final rejection.

The amendment filed September 16, 2005 was entered by the Examiner.

(v) Summary of claimed subject matter

(v) Summary of claimed subject matter. A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each

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claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

Independent claim 1 and dependent claims 2-10 pertain to a braking device for an industrial truck. The required references to the specification and drawings are provided in brackets in the claim summaries below.

The invention provides a braking device that has a first brake cylinder 22 which is actuated by a brake pedal and a second brake cylinder 26 which is actuated by a magnet 44 (p. 4, ln. 10-12). The magnet 44 responds to a signal from an emergency stop device which responds to an omission of electric current that comes from an electrical device in the truck (p. 5, ln. 12-14). The first brake cylinder 22 and the second brake cylinder 26 are connected to a pressure equalization vessel 30 via a joint line 28 (p. 4, ln. 8-9 and Fig. 1). In addition, the first brake cylinder 22 and the second brake cylinder 26 are connected to the brake line 18 by a shuttle valve 24 (p. 4, ln. 5-8 and Fig. 1). The brake line 18, in turn, is connected to a hydraulically actuated brake on each of the wheels (p. 4, ln. 2-5). The second brake cylinder 26 is mounted onto one side of a retaining plate 32 with its piston rod 36 extending through an opening in the retaining plate 32 and connecting to a lever 42 at a pivot point 40 (p. 4, ln. 14-17 and Fig. 2). Retaining plate 32 can be mounted to the truck by means of a flange 34 (p. 4, ln. 13-14 and Fig. 2). The magnet 44 is connected to lever 42 via rod 46 at pivot point 50 (p. 4, ln. 18-20 and Fig. 2). The lever 42 has a third pivot point 52 where rod 56 is connected to the lever 42 (p. 4, ln. 21-22 and Fig. 2). Rod 56 extends through an opening of the retaining plate 32 with a stop 58 mounted on rod 56 so that the rod 56 is supported on the plate 32 but is capable of moving to the left through the opening of the retaining plate 32 (p. 4, ln. 23-26 and Fig. 2). Rods 56 and 46 engage lever 42 by bifurcated elements 54, 48 and can be fixed by means of a bolted joint which can also be used

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to hinge the rods 56 and 46 (p. 5, ln. 4-5 and Fig. 2). Actuation of the second brake cylinder 26 by the magnet 44 occurs when the magnet 44 becomes de-excited (p. 4, ln. 27-29 and p. 5, ln. 1-3). When the magnet 44 becomes de-excited, rod 46 is retracted by the spring 44 which causes the lever 42 to pivot in a clockwise sense, thereby actuating the piston rod 36, which actuates the second brake cylinder 26 (p. 4, ln.28-29 and p. 5, ln. 1-3 and Fig. 2). The magnet 44 can become de-excited due to a signal generated by an emergency stop device (p. 5, ln. 12-14).

(vi) Grounds of Rejection to be Reviewed on Appeal

(vi) Grounds of rejection to be reviewed on appeal. A concise statement of each ground of rejection presented for review.

Review on appeal is requested of the Examiner's contention that claims 1-10 are obvious over Toomey (U.S. 3,765,729) in view of Kessler (U.S. 6,079,792).

(vii) Argument

(vii) Argument. The contentions of appellant with respect to each ground of rejection presented for review in paragraph (c)(1)(vi) of this section, and the basis therefore, with citations of the statutes, regulations, authorities, and parts of the record relied on. Any arguments or authorities not included in the brief or a reply brief filed pursuant to §41.41 will be refused consideration by the Board, unless good cause is shown. Each ground of rejection must be treated under a separate heading. For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately. Any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.

1. The Examiner Erred in rejecting claims 1-10 as obvious over Toomey (U.S. 3,765,729) in view of Kessler (U.S. 6,079,792).

Claims 1-10 have been rejected under 35 USC 103(a) over Toomey (U.S. 3,765,729) in view of Kessler (U.S. 6,079,792). The rejection must be reversed.

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To support an obviousness rejection, the cited prior art must specifically suggest the combination as claimed, and it must be applied in the context of their significance to a technician at the time the invention was made, without knowledge of the solution. It is impermissible, simply to engage in hindsight reconstruction of the claimed invention, using the applicant's structure as a template, picking and choosing among isolated disclosures in the various documents to supply elements to fill the gaps. The cited documents themselves must provide some teaching whereby the applicant's combination would have been obvious, again at the time the invention was made. US patent law is replete with cases that illustrate this principle. *See e.g. In re Fine*, 37 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988); *In re Oetiker*, 24 USPQ2d 1443, 1446 (Fed. Cir. 1992); *In re Fritch*, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992); *In re Kotzab*, 55 USPQ2d 1313, 1316 (Fed. Cir. 2000); and *In re Dembiczak*, 50 USPQ2d 1614 (Fed. Cir. 1999). The Examiner has not made the requisite showing.

Further, as stated in MPEP 2143 and throughout the caselaw, "the prior art reference (or references when combined) must teach or suggest all the claim limitations."

Regarding independent claim 1, the examiner is in error when he states that in Toomey the first and second brake cylinders are connected to a brake line via shuttle valve 22. This error is due to a mis-characterization of a portion of the Tee valve 22, the leg 27, as a brake line or conduit.

This is clearly seen when Figures 1-3 of Toomey are studied.

Understanding the role that leg 27 of the Tee valve 22 has in the system is simplified if the focus is on dual master cylinder 6, and the front braking system, as shown in Figure 1 of Toomey. Dual master cylinder 6 is one of two dual master cylinders and is connected to front conduit 7 which, in turn, is connected to front conduits 8 and 9. Front conduits 8

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and 9, in turn, are each connected to a Tee valve 22 which has a leg 27 that connects the Tee valve 22 to the wheel cylinder 29, as shown in Figure 2. Figure 3 is an expanded view of the Tee valve 22. Thus, the Figures of Toomey clearly show that the leg 27 is a part of the Tee valve 22 and not a brake line or conduit attached to the Tee valve 22. In addition, the specification refers to the leg 27 as part of the Tee valve 22 when it states that "hydraulic fluid will enter through conduit 17 into the leg 27 of the Tee valve 27."

Thus, the examiner is incorrect to equate the leg 27 of the Tee valve 22 to a brake line or conduit. This mis-characterization was the only means by which the examiner could state that Toomey suggested or taught two master cylinders sharing a single brake line or conduit since Figure 1 of Toomey shows that conduits 7, 8, 9, 10, 11 and 12, which are connected to the first dual master cylinder 6, are separate from conduits 16, 17, 18, 19, 20 and 21 which are connected to the second dual master cylinder 15. In fact, Toomey refers to the brake system as consisting of "two parallel systems for operating the four hydraulic brakes of a vehicle."

Therefore Toomey fails to meet the limitations of claim 1. Furthermore, Kessler does not teach or suggest two brake cylinders connected to a single brake line. Thus, neither the teachings of Toomey nor the combination of Toomey with Kessler would result in the combined features of independent claim 1. Therefore, a finding of obviousness is inappropriately applied.

For at least the reasons above, claim 1 and those claims dependent thereon are believed to be in condition for allowance.

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3. Conclusion

The Examiner has not shown motivation to combine the references and even when combined the teachings of these patents still fail to teach or suggest the method of any of the claims 1-10. The Board is respectfully requested to reverse the rejections with instruction to pass the application to issue.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: February 16, 2006

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(viii) Claims Appendix

(viii) Claims Appendix. An appendix containing a copy of the claims involved in the appeal.

1. (Previously Presented): A braking device for an industrial truck, comprising a first hydraulic brake cylinder which is coupled with an actuation member and which is in fluid communication with a hydraulic brake of the truck through a braking conduit, a second hydraulic braking cylinder, and an electrical device supplied with electric current, the braking conduit being led to a hydraulic brake of at least one wheel of the industrial truck, the second braking cylinder being also connected to the hydraulic braking conduit, the second braking cylinder being actuable by an electric magnet, and an emergency stop device being provided which responds to the omission of the electric current, the emergency stop device supplying a braking signal to the electric magnet for the actuation of the second hydraulic braking cylinder in case of omission of the current.

2. (Previously Presented): The braking device as claimed in claim 1, characterized in that the first and second brake cylinders (22, 26) are connected to the brake conduit (18) via a shuttle valve (24).

3. (Original): The braking device as claimed in claim 1, characterized in that the electromagnet (44) is acted on by a spring (44) which is tensioned when the electromagnet (44) is energized, and which actuates the second brake cylinder (26) when the electromagnet (44) is de-energized.

4. (Original): The braking device as claimed in claim 1, characterized in that the electromagnet (44) is coupled to the second brake cylinder (26) via a lever linkage.

5. (Original): The braking device as claimed in claim 1, characterized in that the electromagnet (44) acts upon a first rod (46) which is hinged to a lever (42) at a first pivot point (50), the second

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brake cylinder (26) is hinged to a lever (42) at a second pivot point (40), and the lever (42) is stationarily supported at a third pivot point (52) wherein the second pivot point (40) is located between the first and third pivot points (50, 52), thereby allowing to apply an actuation force to the second brake cylinder (26).

6. (Original): The braking device as claimed in claim 5, characterized in that the pivot point (52) has hinged thereto a rod (56) which is stationarily supported only in the direction of pull.

7. (Original): The braking device as claimed in claim 4, characterized in that a joint mounting is provided for the second brake cylinder (26) and the electromagnet (44) and the lever linkage.

8. (Original): The braking device as claimed in claim 7, characterized in that the second brake cylinder (26) and the electromagnet (44) are disposed on one side of a retaining plate (32) and the lever (42) with the rods (46, 36, 56) is disposed on the other side of the retaining plate (32).

9. (Original): The braking device as claimed in claim 5, characterized in that at least one rod (46, 36, 56) is adjustably hinged to the lever (42).

10. (Original): The braking device as claimed in claim 8, characterized in that at least one of the rods (46, 36, 56) grips over the lever (42) in the way of a fork and said rods are hinged to the lever (42) by means of a bolted joint.

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(ix) Evidence appendix. An appendix containing copies of any evidence submitted pursuant to §§1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See §41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

Not applicable.

(x) Related proceedings appendix. An appendix containing copies of decisions rendered by a court of the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

Not applicable.

(2) A brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See §1.116 of this title for amendments, affidavits or other evidence filed after the date of filing the appeal.

(d) If a brief is filed which does not comply with all the requirements of paragraphs (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

(d) The time periods set forth in this section are extendable under the provisions of §1.136 of this title for patent applications and §1.550(c) of this title for ex parte reexamination proceedings.